

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:) CHAPTER 7
)
SUSAN M. OSBORNE,) CASE NO. 08-60836
)
Debtor.) JUDGE RUSS KENDIG
)
)
) MEMORANDUM OF OPINION
) (NOT INTENDED FOR
) PUBLICATION)

This matter is before the court on Debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on March 21, 2008. Debtor complied with the Court's request for additional information on April 21, 2008.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and is premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtors' income is 150 percent of the poverty level. According to the Department of Health and Human Services 2008 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/08poverty.shtml>, the poverty income for a family of three is \$17,600.00. At 150 percent of poverty, the poverty income for a family of three is \$26,400.00 annually, or \$2,200.00 per month.

According to the application, Debtor's income is \$1,001.00 per month. According to Schedule I, this income is derived from \$151.00 in monthly social security benefits for Debtor's two children, \$297.00 in monthly food stamps, and alimony of \$402.00 per month. Debtor filed a statement advising that she was unemployed in 2007 and was not required to file a tax return. Based upon the information provided by Debtor, the court finds that Debtor's income is less than 150% of the applicable poverty level and therefore she has established the first prong of the test.

Next, the court must determine if Debtor has the ability to pay the filing fee in installments. Upon review of Debtor's Schedule J, the court concludes that Debtor is not able to pay the filing fee in installments. Debtor's budget shows a monthly shortfall of

\$274.00. The expenses appear reasonable, if not modest, for a family of three. There is no room in the budget to make up the shortfall, let alone add an installment payment. Thus, the court finds that the Debtor does not have the ability to pay the filing fee in installments and she has satisfied the second prong of the test.

In light of the above, the Court hereby **GRANTS** Debtor's application to waive the filing fee.

An order in accordance with this decision shall be issued immediately.

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

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